

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-73-T – ORDER NO. 2004-308

JUNE 23, 2004

IN RE: Application of Minute Man)	
Movers, LLC, for a Class E (HHG))	ORDER GRANTING
Certificate of Public Convenience)	CLASS E CERTIFICATE
and Necessity)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Application of Minute Man Movers, LLC (“Minute Man”), 310 Ivy Green Lane, Irmo, South Carolina, 29063, for a Class E Certificate of Public Convenience and Necessity to transport commodities as follows:

Household Goods, as defined by R. 103-210(1)
Between points and places in Richland, Lexington, and
Kershaw Counties, South Carolina.

The Commission’s Executive Director instructed Minute Man to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceedings on the Application. McCoy’s Moving and Storage (“McCoy’s”) filed a Petition to Intervene Out of Time; however, McCoy’s notified the Commission, by and through the Commission’s General Counsel, that it desired to withdraw its Petition to Intervene prior to the hearing.

The hearing on the Application was held on April 22, 2004, at 10:30 A.M. in the offices of the Commission. The Honorable Mignon Clyburn presided. L.A. “Smokey” Brown, Jr., Esquire, represented Minute Man. Minute Man presented the testimony of J.

Hunter Matthews, Ashley Matthews, and Aneita R. Matthews. F. David Butler, General Counsel, represented the Commission Staff. The Staff presented the testimony of L. George Parker, Jr., Manager of the Commission's Transportation Department.

J. Hunter Matthews, co-owner of Minute Man, testified. Mr. Matthews noted that he started Minute Man in October 2003 with his mother, Aneita R. Matthews. Minute Man received certification to transport commercial goods and has started transporting commercial goods locally, in Richland and Lexington Counties. Mr. Matthews testified that Minute Man's vehicles have been thoroughly inspected by the State Transport Police and the Department of Transportation. Mr. Matthews also testified that Minute Man possesses the equipment, material, vehicles and company facilities necessary to effect a successful moving company. Mr. Matthews cited Minute Man's experience by referring to several examples of successful commercial moves. Minute Man currently owns two (2) moving vans in its fleet, with the capability of adding additional vans.

Mr. Matthews testified that his employees have prior experience with other moving companies. The employees are screened for drug use and traffic violations. Minute Man appears to be financially sound with no judgments against it or the witnesses as individuals. Mr. Matthews noted that he is familiar with the Commission rules and regulations and understands his responsibility for all employees of Minute Man to obey all South Carolina traffic laws and regulatory laws. Finally, Mr. Matthews testified that Minute Man specializes in "last minute" moves. Instead of waiting for two to three weeks for other moving companies, Minute Man is ready to move its customers on less than one week of notice.

Mr. Matthews admitted that Minute Man had engaged in moving household goods prior to receiving certification. Mr. Matthews also testified that he was unaware of the certification requirement of household goods movers until a Commission's inspector stopped to render assistance to one of the trucks and informed the driver that certification was required. According to Mr. Matthews, upon notification by the Commission's inspector that certification from the Commission was required to move household goods legally, Minute Man immediately started the certification process with the Commission. Mr. Matthews also stated that no other licensing board or state agency with which Minute Man had dealt had advised Minute Man of the requirement of obtaining certification from this Commission.

Ashley Matthews testified that she acts as the office manager for Minute Man. Ms. Matthews testified that Minute Man received numerous telephone calls in the last monthly period concerning potential moves. Ms. Matthews indicated that Minute Man received a tremendous response from its phone book advertising. The phone calls concern moves in Richland, Lexington, and Kershaw Counties; therefore, Minute Man decided to apply for its certificate to transport household goods in those counties. Continued business success will lead to further applications to this Commission for statewide service.

Aneita Matthews testified concerning Minute Man's insurance, advertising, and current and future operations. She provided proof of the required insurance by submitting an updated insurance quote to this Commission. Concerning advertising, especially an Internet advertisement, Ms. Matthews (as well as Mr. Matthews) admitted

to several inaccuracies, which were corrected immediately following the hearing. Minute Man submitted a late filed exhibit showing the corrected and updated Internet advertisement to this Commission. Ms. Matthews testified that Minute Man is a family business that has received excellent response to its advertisement in the phone book and that Minute Man has an opportunity to grow and succeed in its industry. Ms. Matthews testified that she provided the financial backing for Minute Man and intends to work full-time with Minute Man in the near future. Ms. Matthews also testified that Minute Man is financially sound at this time and that Minute Man fully intends to abide by all regulations and guidelines set by this Commission. Ms. Matthews expressed regret for not having received certification from the Commission prior to beginning operations, but Ms. Matthews testified that they had no knowledge of the requirement to obtain certification from the Commission.

L. George Parker, Jr., Manager of the Commission's Transportation Department, testified as to his inspection of Minute Man's facilities and vehicles, showed the Commission various photographs of Minute Man's vehicles, and further testified that he believed Minute Man's vehicles and facilities met the Commission's criteria for operating as a moving company.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such

operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as "a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a

² By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.

- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Minute Man, desires to provide moving services of household goods within and between points and places in Richland, Lexington, and Kershaw Counties, South Carolina.

2. The Applicant, Minute Man, is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated by (1) evidence of an acceptable safety rating, (2) that there are no outstanding judgments

pending against Minute Man, and (3) that Minute Man will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record contains (1) a certification that Minute Man, through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Minute Man. “Able” was demonstrated by the evidence of record which reveals that Minute Man has the necessary trucks with which to perform moving services, has insurance which meets the minimum requirements set by this Commission, and has undergone an inspection by personnel from this Commission of its equipment. The evidence of record also indicates that Minute Man possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. “Willingness” was demonstrated by the filing of the Application and the testimony of the witnesses indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Minute Man are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant establish that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in Richland, Lexington, and Kershaw Counties of South Carolina. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

4. Due to the admission of Mr. Matthews that Minute Man has engaged in household goods moves prior to receiving certification and also due to the irregularities contained in Internet advertising of Minute Man, we find sufficient cause to require

Minute Man to undergo a compliance audit within 90 days of the issuance of this Order.

We also find sufficient cause to require any complaints received by either the Transportation Department or the Consumer Services Department to be reported to the Commission immediately.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Minute Man has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Minute Man has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which Minute Man proposes to serve requires the services proposed by the Application.

3. Based on the conclusions above, that Minute Man has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Minute Man should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):
Between points and places in Richland, Lexington, and
Kershaw Counties, South Carolina

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

4. We conclude that Minute Man should be required to undergo a compliance audit within 90 days of the issuance of this Order and that any complaint received by either the Transportation Department or the Consumer Services Department concerning Minute man's operations should be reported to the Commission immediately.

IT IS THEREFORE ORDERED:

1. That the Application of Minute Man Movers, LLC for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Richland, Lexington, and Kershaw Counties, South Carolina.

2. Minute Man Movers, LLC shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through R. 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26

(1976), as amended, a Certificate shall be issued to Minute Man Movers, LLC authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance, and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

5. Minute Man shall undergo a compliance audit, conducted by the staff of the Transportation Department, within 90 days of the issuance of this Order, and any complaints received by either the Transportation Department or the Consumer Services Department should be reported to the Commission immediately.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Mignon L. Clyburn, Chairman

ATTEST:

/s/
Bruce F. Duke, Executive Director
(SEAL)